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Subject: Fourth Amendment Violation

CT and Federal Firearms Legislation Update 160304.0 – Fourth Amendment Violation

COMMENTARY & MISCELLANEOUS

In recent days, I have seen and heard much discussion of CGA H.B. 5408 an Act Concerning the Presentation of a Carry Permit and most the conversation seems to regard the Second Amendment while minimizing the primary impact of the legislation, which is on the Fourth Amendment.

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Fourth Amendment Violation

Connecticut house bill H.B. 5408 an Act Concerning the Presentation of a Carry Permit, while it does have Second Amendment implications is a direct threat to the Fourth Amendment rights of the citizens of Connecticut. The Fourth Amendment reads as follows.

"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

Section Seven of the Connecticut Constitution echoes the Fourth Amendment.

"The people shall be secure in their persons, houses, papers and possessions from unreasonable searches or seizures; and no warrant to search any place, or to seize any person or things, shall issue without describing them as nearly as may be, nor without probable cause supported by oath or affirmation."

The simple fact that a person is openly carrying a firearm is not a crime nor is it a reason for a law enforcement agent to violate the security of any person. The 911 calls generated by a populace ignorant of the law or willfully using anti-gun

sentiment to harass law abiding persons by using law enforcement personnel to violate the Fourth Amendment and Section Seven of the state constitution is intolerable.

The text of the bill follows; italicized text is to be deleted, underlined text added

Section 1. Subsection (b) of section 29-35 of the 2016 supplement to the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2016*):

(b) The holder of a permit issued pursuant to section 29-28 shall carry such permit upon one's person while carrying such pistol or revolver. Such holder shall present his or her permit upon the request of a law enforcement officer *[who has reasonable suspicion of a crime]* for purposes of verification of the validity of the permit or identification of the holder, provided such law enforcement officer has reason to believe such holder is carrying a pistol or revolver. *[that is observed by such law enforcement officer.]*

The following would be the result.

(b) The holder of a permit issued pursuant to section 29-28 shall carry such permit upon one's person while carrying such pistol or revolver. Such holder shall present his or her permit upon the request of a law enforcement officer for purposes of verification of the validity of the permit or identification of the holder, provided such law enforcement officer has reason to believe such holder is carrying a pistol or revolver.

The phrase "provided such law enforcement officer has reason to believe such holder is carrying a pistol or revolver" is a statement of the obvious in the case of an open carry, however there is no limitation to open carry. In other words, the law enforcement agent could confront anyone at all at any time and demand to see that person's permit.

In an open carry situation, under the proposed legislation, the "stop and frisk" action would be legal but the Fourth Amendment issue of probable/reasonable cause remains. If the situation is concealed carry or the person does have a firearm on their person, the Fourth Amendment violation is clear and indisputable.

The Legal Zoom website explains it well as follows.

"Stop and frisk has been an effective tool for police since the 1968 case *Terry v. Ohio*, when the Supreme Court ruled in favor of it. The court agreed with the police that officers face uncertain and dangerous situations on the streets—circumstances that can potentially threaten both law enforcement officers and the public. For this reason, police officers need a set of flexible responses that allow them to react based on the information they possess. Thus, distinctions should be made between a stop and an arrest (or seizure of a person), and between a frisk and a search.

Under the *Terry* ruling, a police officer may stop and detain a person based on reasonable suspicion. And, if the police reasonably suspect the person is armed and dangerous, they may also frisk him or her for weapons.

Reasonable suspicion is defined by a set of factual circumstances that would lead a reasonable police officer to believe criminal activity is occurring. This is different from the probable cause (what a reasonable person would believe) required for an arrest, search, and seizure. If the stop and frisk gives rise to probable cause to believe the detainee has committed a crime, then the police officer should have the power to make a formal arrest and conduct a search of the person.

What constitutes a stop and frisk? Can one be stopped and not frisked? Or does one action always follow another? A stop is a seizure of a person. There are two types of stops: (1.) a show of force and (2.) a show of authority. With a show of force, an officer must physically lay hands on the person with the intent of detaining them. In a show of authority, the officer's look, demeanor, and display of authority persuades a person to submit to authority. The key element in this type of stop is that the individual must submit to the show of authority, believe they have been seized, and feel compelled to cooperate.

A stop is justified if the suspect is exhibiting any combination of the following behaviors:

1. Appears not to fit the time or place.
2. Matches the description on a "Wanted" flyer.
3. Acts strangely, or is emotional, angry, fearful, or intoxicated.
4. Loitering, or looking for something.
5. Running away or engaging in furtive movements.
6. Present in a crime scene area.
7. Present in a high-crime area (not sufficient by itself or with loitering)."

<https://www.legalzoom.com/articles/when-can-the-police-stop-and-frisk-you-on-the-street>

A discussion of the exact implications of the term "frisk" could take place, but the "stop" is the primary problem as, under the constitutional guarantees, the unjustified stop is a seizure of the person and the demand for examination of the permit is most likely an unlawful search even if the person was not physically touched by the law enforcement agent.

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Howard P. Thomas

A militia, when properly formed, are in fact the people themselves

